

RULEMAKING NOTICE

Notice Number	Rule Number	Env-A 3200
1. Agency Name & Address:	2. RSA Authority:	RSA 125-J:12, I
NH Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	3. Federal Authority:	N/A
	4. Type of Action:	
	Adoption	
	Amendment	
	Repeal	
	Readoption	
	Readoption w/amendment	X

5. Short Title: NOx Budget Trading Program

6. (a) Summary of what the rule says and of any proposed amendments:

The existing rules, Env-A 3200, *NOx Budget Trading Program*, implement provisions of RSA 125-J by establishing the NOx Budget Program (Program), which requires reductions in ozone-season emissions of oxides of nitrogen (NOx), an ozone precursor, from NOx budget sources. NOx budget sources are defined in RSA 125-J:1, XIX-b as fuel fired boilers or indirect heat exchangers with a maximum rated heat input capacity of 250 MMBtu/Hour or more, and all electric generating facilities with a rated output of 15 MW or more. The Program is intended to facilitate compliance with the federal Clean Air Act; specifically, to further the effort to achieve the national ambient air quality standards (NAAQS) for ozone. The existing rules are scheduled to expire in November 2015, so the Department is proposing to readopt them. If this rulemaking proceeding extends beyond the expiration date, the rules will continue in effect pursuant to RSA 541-A:14-a, I, subject to the conditions stated therein. As part of the readoption, amendments are proposed as follows:

- Allow new budget sources to convert allowances to discrete emissions reductions (DERs) at a one-to-one ratio and to use the DERs as offsets against ozone-season NOx emissions (Env-A 3206.02(b));
- Allow new budget sources to convert allowances to DERs and to sell the DERs to smaller industrial sources for RACT compliance in accordance with Env-A 3100 (Env-3206.02(d));
- Delete Env-A 3207.11, which requires Phase III and Phase IV (smaller) budget sources to transfer unused allowances, which can be traded in accordance with Env-A 3200, to Phase II (large) budget sources in exchange for DERs, which smaller sources can trade in accordance with Env-A 3100. This “swap” provision applies only to Eversource (formerly PSNH), the only Phase II budget source in New Hampshire. The rule is no longer necessary because Eversource has exhausted its supply of DERs and is no longer eligible to receive new DERs, and thus can no longer effectuate a swap;
- Delete the definitions for Phase II, Phase III, and Phase IV budget sources, as they are not needed once Env-A 3207.11 is deleted;
- Simplify the process for submitting a request for set-aside allowances by allowing fax and email requests, and requiring submission of raw power generation data instead of generation-to-allowance conversion calculations (Env-3207.12(b));
- Streamline the permitting process by revising Env-A 3208.02(a) to remove the requirement for the permit to reference the NOx allowance tracking system (NATS) compliance account and identify the authorized account representative;
- Change the frequency of program audits to match the schedule for rule re-adoption of the rules (Env-A 3218.02); and
- Generally clarify existing language, particularly in Env-A 3207.08, Env-A 3209.02, Env-A 3209.03, and Env-A 3209.07.

6. (b) Brief description of the groups affected:

The rules affect electrical generation facilities with fuel fired boilers or indirect heat exchangers with a maximum rated heat input capacity of 250 MMBtu/Hour or more, and all electric generating facilities with a rated output of 15 MW or more.

6. (c) Specific section(s) of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	State Statutes Implemented
Env-A 3201 through Env-A 3205	RSA 125-J:2-a
Env-A 3206	RSA 125-J:2-a & 4-a
Env-A 3207	RSA 125-J:2-a & 4-b
Env-A 3208 & Env-A 3209	RSA 125-J:2-a & 4-a
Env-A 3210	RSA 125-J:2-a
Env-A 3211	RSA 125-J:2-a & 4-a
Env-A 3212	RSA 125-J:2-a, 4-a, & 7
Env-A 3213 through Env-A 3216	RSA 125-J:2-a & 4-a
Env-A 3217	RSA 125-J:2-a, 4-a, & 8, I
Env-A 3218	RSA 125-J:2-a

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Karla McManus	Title:	Planning and Rules Manager
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The rules also can be viewed in PDF at

<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on September 18, 2015**

☒ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **September 11, 2015 at 9:30 AM**

Place: **Rooms 110-111, DES Offices, 29 Hazen Drive, Concord NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 15:146 , dated 08/06/15:

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

When comparing the proposed rules to the existing rules, independently owned businesses may have an indeterminable decrease in costs.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds. When Env-A 3200 was initially adopted in 1999, the Environmental Protection Agency approved incorporating this rule into the New Hampshire's state implementation plan in order to facilitate compliance with the Clean Air Act by implementing a trading program within the budget established in a memorandum of understanding between the State and the Environmental Protection Agency. As a result, the program is currently federally enforceable.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

To the extent an independently owned business participates in the NOx Budget Trading Program, they may have an indeterminable reduction in costs associated with the changes to the permitting

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process of allowing the submission of raw power generation data instead of generation-to-allowance conversion calculations.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The rules apply to fuel fired boilers or indirect heat exchangers with a maximum rated heat input capacity of 250 MMBtu/Hour or more and all electric generating facilities with a rated output of 15 MW or more, and there currently are no such devices owned by political subdivisions. (While some political subdivisions may have small generation capacity, even large diesel backup generators typically produce no more than 2 MW of output, or approximately 7 MMBtu/Hour.) In any event, the proposed changes reduce costs for those who are subject to the rules. Thus, the rules do not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision, and so do not violate Part I, Article 28-a of the New Hampshire Constitution.